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No. 94-2069

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SPECTRAMED, INC.,
Petitioner,

vs.

BAXTER HEALTHCARE CORPORATION
and UTAH MEDICAL PRODUCTS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY BRIEF

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Respondents.

PETITIONER'S REPLY BRIEF

I.

INTRODUCTION

Respondents' Opposition entirely fails to address the question presented by the Petition herein. Rather than addressing the question presented of whether a court of appeals can nullify a declaration of a mistrial by a district court on the basis that the district court, subsequent to declaring the mistrial, ruled on post-trial motions brought by the parties, the Opposition makes only the fatally flawed argument that a mistrial never occurred. However, this argument is a denial of reality. In addition, it is based on a seriously incomplete quotation of a statement by the district court judge.

II.

THERE CAN BE NO DOUBT THAT A MISTRIAL WAS DECLARED

In addition to the statements by the District Court set forth at pages 9 and 10 of the Petition (where it is noted that the District Court first stated that it was necessary "to declare a mistrial" and discharge the jury, and then twice subsequently referred to the fact that a mistrial had been "declared", as demonstrated in Appendices D, E and F to the Petition), we note that the trial court's docket for February 19, 1993, the date of declaration of the mistrial, reads as follows:

> "913. MO: 52nd day trial. Closing arguments md by each side as to issues covered by special interrog number 9 & 11. & limits purpose. Having been permitted by the Crt notes that the special verdict dtd 2-19-93 has not been altered since it was rcvd by the Crt & sealed by the clrk 2-18-93 prior to in-Crt session for further limited argument. Polling waived: Fld Jury notes; mistrial decl: Crt & cnsl conf re pltf's prop ltd argument, which is granted. Each side argues dlib. cont. Jury note 17 rcfd. telephone conf hld as to respse by the Crt, which was faxed jury deadlock. All prtys: verdict rtnd, read: pulling [sic] waived, Crt decl mistrial, cnsl ords to rtn at 9am 2-23-93 for sched conf. Dft renews all its formal rules 50 mtns. Jury thanked dischrgd. Fld special verdict. Cnsl should stip to retention of exhts. (C/R-K/Haaland/R. Worth)." (emphasis added).

Thus, the docket entry states, in pertinent part, the following facts:

"1. Crt decl mistrial."

"2. Jury thanked dischrgd."

This docket entry is set forth in Appendix G hereto.

Thus, Respondents' argument that declaration of a mistrial did not occur is directly contrary to the indisputable record reflected to Appendices D-G.

A. Respondents' Incomplete Quotation

In footnote 6 on page 6 of Respondents' Opposition, an incomplete quotation of a statement by the District Court is set forth and Respondents' Appendix A contains the same incomplete quotation. The portion of the quotation which Respondents omitted changes the entire import of the District Court's statement which, in its complete form (with the portion omitted in Respondents' incomplete quotation underlined), reads as follows:

> "THE COURT: I need to deal with the prospect of entering a judgment, if the Court rules in accordance with the tentative ruling placed before counsel this afternoon. And that is in [sic] inclination.
>
> In order to enter a judgment, it would seemingly be compatible with the plaintiffs' suggestion to the Court, when the jury was unable to unanimously agree that

> there be a mistrial [and] that the Court enter a judgment insofar as it can do so on the claims that the Court determines have been adjudicated. And since I decline to conclude that the plaintiffs are correct that the Court should enter judgment with regard to the findings about infringement, inasmuch as there is no unanimous agreement to questions 9 and 11, but the Court is of the view that the claims for invalidity that were unanimously adjudicated can be the subject of judgment, that we need to confer about what kind of a judgment, if any, can be entered that would embody these rulings and essentially draw the matter to partial adjudication, if you will, so as to take the case as far as it can go with regard to this stage of the proceedings."

The complete quotation is appended hereto as Appendix H. The key portion of the omitted quotation is as follows:

> "And since I decline to conclude that the Plaintiffs are correct that the Court should enter judgment with regard to the findings about infringement, in as much as there is no unanimous agreement as to questions 9 and 11 . . ." (emphasis added)

Thus, Respondents' argument (page 7 of the Opposition) that the District Court "properly gave effect to a portion of the unanimous findings of the jury by entering judgment thereon" is exactly what the District Court did not do with the jury findings on infringement. This is plain

from the statement by the District Court which was omitted from Respondents' cropped quotation.

Yet, this is exactly what the Court of Appeals for the Federal Circuit did, i.e., adopt the jury's finding of infringement in spite of the mistrial and in spite of the District Court's refusal to enter judgment on these findings. This action by the Federal Circuit was a substantial departure from the accepted and usual course of judicial proceedings.

III.

THE NEED FOR EXERCISE OF THIS COURT'S POWER OF SUPERVISION

In the present case, the Federal Circuit has so far departed from the accepted and usual course of judicial proceedings that intervention by this Court, as contemplated by Rule 10.1(a) of this Court, is profoundly warranted. The court below cited no authority for its unprecedented act of refusing to give effect to the declaration of a mistrial and proceeding to do that which the District Court had expressly refused to do, namely, adopt the jury's findings on infringement. Similarly, absolutely no support is cited in Respondents' Opposition for this unprecedented act by the Federal Circuit. This is the very definition of a departure from the accepted and usual course of judicial proceedings.

If this Court does not step in and correct this situation, great mischief will result. A few examples of such mischief follow below.

1. A district court judge who declares a mistrial and is later told by an appellate court that she did not do so because she ruled on post-trial motions brought by the parties is left on remand, as here, to try to figure out what she should do next when she well knows she declared a mistrial.

2. The Federal Circuit, following its precedent in the present case, will consider itself able to ignore declarations of mistrials and make rulings as if a trial had occurred when, in fact, the declaration of a mistrial has caused the trial to be as if it had never occurred.

3. Lawyers for parties in cases in which a mistrial has been declared will experiment with numerous devices such as motions and the like in an effort to set the stage for an argument that a declaration of a mistrial should be nullified.

While mistrials are not an everyday occurrence, the large number of patent cases currently being tried to juries means that mistrials by reason of inability by the jurors to reach a unanimous result will happen in a finite number of cases which will come to the Federal Circuit for review. Guidance by this Court at this time will help the Federal Circuit discharge its appellate responsibilities in cases involving mistrials in a manner consistent with the traditional notion that a mistrial renders a trial a nullity.

As noted by Mr. Justice Stevens in *Florida v. Rodriguez*, 469 U.S. 1, 7 (1984):

> "As the Court of last resort in the federal system, we have supervisory authority and therefore must occasionally perform a pure error-correcting function in federal litigation." (dissenting).

The many cases falling into this category are collected in "Supreme Court Practice", 7th Ed., Stern et al (1993), pp 192. In addition, this Court provided guidance to the Federal Circuit in *Dennison Manufacturing Co. v. Panduit Corp.*, 475 U.S. 809 (1986) where this Court, in a summary disposition, remanded to the Federal Circuit in a case in which this Court concluded that the Federal Circuit had improperly ignored Federal Rule of Civil Procedure 52(a) by substituting its view of factual issues for that of the district court. Similarly, in *Cardinal Chemical Co. v. Morton International, Inc.*, 508 U.S. ___, 124 L.Ed.2d 1, (1993) this Court vacated and remanded a Federal Circuit decision which, after affirming a district court judgment of noninfringement, vacated a district court judgment that the patent was invalid because such vacatur was held by this Court to be improper treatment by the Federal Circuit of a ruling by a District Court.

The question presented here is of precisely the same quality, i.e., it is a question of whether the Federal Circuit is employing sound procedure in dealing with a legal issue, here, the consequence of the declaration of a mistrial.

IV.

CONCLUSION

It is crucially important for the Supreme Court to intervene in this case to prevent a serious departure from the traditional, accepted and usual judicial procedure in dealing with the aftermath of a declaration of a mistrial. The grant of a Writ of Certiorari is plainly warranted.

Respectfully submitted,

DATE: August 11, 1995

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APPENDIX G

TRIAL COURT'S DOCKET FOR
FEBRUARY 19, 1993

Plaintiff:	Defendant:	Page 42
BAXTER	SPECTRAMED	

DATE	NR.	PROCEEDINGS
2/19/93	kp	913. MO: 52nd day trial. Closing arguments md by each side as to issues covered by special interrog number 9 & 11. & limits purpose. Having been permitted by the Crt notes that the special verdict dtd 2-19-93 has not been altered since it was rcvd by the Crt & sealed by the clrk 2-18-93 prior to in-Crt session for further limited argument. Polling waived: Fld Jury notes; mistrial decl: Crt & cnsl conf re pltf's prop ltd argument, which is granted. Each side argues dlib. cont. Jury note 17 rcfd. telephone conf hld as to respse by the Crt, which was faxed jury deadlock. All prtys: verdict rtnd, read: pulling [sic] waived, Crt decl mistrial, cnsl ords to rtn at 9am 2-23-93 for sched conf. Dft renews all its formal rules 50 mtns. Jury thanked dischrgd. Fld special verdict. Cnsl should stip to retention of exhts. (C/R-K/Haaland/R. Worth).

APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ALICEMARIE H. STOTLER,
JUDGE PRESIDING

BAXTER HEALTHCARE CORP, and UTAH MEDICAL PRODUCTS, INC., Plaintiffs,	) No CV 89-131AHS
v.	
SPECTRAMED, INC., Defendant.	

REPORTER'S TRANSCRIPT OF PROCEEDING
Santa Ana, California

Tuesday, March 2, 1993

Kathleen J. Haaland, CSR
Official Court Reporter
412 United States Courthouse
751 Santa Ana Boulevard
Santa Ana, CA 92701

March 2, 1993, Page 34, lines 1-23:

THE COURT: I need to deal with the prospect of entering a judgment, if the Court rules in accordance with the tentative ruling placed before counsel this afternoon. And that is in inclination.

In order to enter a judgment, it would seemingly be compatible with the plaintiffs' suggestion to the Court, when the jury was unable to unanimously agree that there be a mistrial [and] that the Court enter a judgment insofar as it can do so on the claims that the Court determines have been adjudicated. And since I decline to conclude that the plaintiffs are correct that the Court should enter judgment with regard to the findings about infringement, inasmuch as there is no unanimous agreement to questions 9 and 11, but the Court is of the view that the claims for invalidity that were unanimously adjudicated can be the subject of judgment, that we need to confer about what kind of a judgment, if any, can be entered that would embody these rulings and essentially draw the matter to partial adjudication, if you will, so as to take the case as far as it can go with regard to this stage of the proceedings.